UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/2001/47
29 January 2001

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Agenda item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in the former Yugoslavia

Report of Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia

GE.01-10652 (E)

CONTENTS

		Paragraphs	Page
Executive summary			3
Introduction		1 - 4	6
I.	BOSNIA AND HERZEGOVINA	5 - 38	6
A.	Overview	6 - 7	6
B.	General human rights situation	8 - 10	7
C.	Right to return and to property	11 - 14	8
D.	Economic and social rights and discrimination	15 - 23	9
E.	Gender based violence and trafficking	24 - 29	11
F.	Conclusions and recommendations	30 - 38	12
II.	REPUBLIC OF CROATIA	39 - 74	13
A.	Introduction	39 - 40	13
B.	War crimes	41 - 52	13
C.	Returns	53 - 57	16
D.	Technical cooperation	58 - 59	17
E.	Missing and detained persons	60 - 62	17
F.	Security	63	18
G.	Illegal migrants	64	18
H.	Social and economic rights	65 - 66	18
I.	Gender issues	67	19
J.	Conclusions and recommendations	68 - 74	19
III.	FEDERAL REPUBLIC OF YUGOSLAVIA	75 - 126	20
A.	Introduction	75 - 77	20
B.	General observations	78 - 84	21
C.	Developments in Serbia since the election	85 - 88	22
D.	National minorities	89 - 90	23
E.	Political prisoners and the missing	91 - 93	24
F.	Crisis in the Presevo valley	94 - 97	24
G.	Developments in Montenegro	98 - 104	25
H.	Developments in Kosovo	105 - 120	27
I.	Conclusions and recommendations	121 - 126	30

Executive summary

Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia, has submitted the present report which covers events in the region from September to December 2000. The report will be supplemented by an update at the time of its presentation to the Commission in spring 2001.

The Special Rapporteur emphasizes the importance of addressing some of the key problems in the countries of his mandate from a regional perspective. Some of the questions covered in the present report are best addressed regionally, including the return of refugees and related property issues, trafficking in human beings, and war-related prosecutions and amnesties (especially as they affect the return of refugees and displaced persons). The Special Rapporteur suggests that the Commission on Human Rights may wish to re-visit aspects of his mandate to permit better analysis of important human rights issues which cut across international borders.

Bosnia and Herzegovina

The Special Rapporteur observes once again that there is little fundamental change or significant progress to report on respect for human rights and the rule of law. A climate of nationalism and intolerance, as illustrated by the aggressive election campaign in November, continues to prevail in the country. Compared to the dramatic changes in the Republic of Croatia and the Federal Republic of Yugoslavia in 2000, change in Bosnia and Herzegovina is happening at a much slower pace.

The role of the police, as agents of the State, in ensuring the effective protection of human rights remains vitally important. However, police reform has proceeded slowly and numerous reports of lack of professionalism due to ethnic bias continue to be received. In addition, the lack of a professional and independent judiciary remains a major concern.

On a more positive note, there has been a continued trend towards greater implementation of decisions of human rights institutions, including the Human Rights Chamber, the Ombudsman and the Federation Ombudsmen. Even recommendations and decisions in some politically-sensitive cases are finally being implemented. In April 2000, the first three Ombudsmen for the Republika Srpska were appointed.

The main concern in Bosnia and Herzegovina continues to be the return of refugees and displaced persons. Security is still a major factor hindering their return in some parts of the country. Other factors slowing their return are obstructions in property law implementation, lack of basic utilities, lack of employment opportunities, difficulties with regard to pensions and health care, and discrimination. The question of the sustainability of return, particularly with respect to economic and social rights, is of great concern to the Special Rapporteur and is a main focus of his report.

The trade in women and children for the purpose of forced prostitution is a serious human rights violation now being committed in Bosnia and Herzegovina. The Council of Ministers has

passed a resolution establishing a State-level working group to draw up a national plan of action on the issue. Measures taken by the Government are encouraged and supported by the Special Rapporteur.

Republic of Croatia

The Special Rapporteur recognizes the positive achievements of the Government of Croatia in recent months in a number of key areas. He expresses continuing deep concern, however, over the unequal application of rule of law, and the politicization of local judiciaries, as demonstrated by the sharp escalation of arrests of Croatian citizens of Serb ethnicity on war-crimes charges. He notes that such arrests have a major impact on the return of refugees.

The Special Rapporteur applauds the stated commitment of the Government to respect the right of refugees and internally displaced persons to return to their homes, but he notes that return continues to be obstructed in many ways. The central issue of property rights - in particular, restitution and the question of lost tenancy or occupancy rights - continues to slow the return process.

The Special Rapporteur expresses his support for the ongoing technical cooperation projects planned by OHCHR in Croatia in 2001, in consultation with the Government, and observes that projects emphasizing human rights training and education can be of great value to Croatian society at large.

Federal Republic of Yugoslavia

The Special Rapporteur recalls that the last quarter of 2000 witnessed a number of dramatic political changes in the Federal Republic of Yugoslavia, which he hopes will lead to significant improvements in the human rights situation in the region over the next year. The most important development was the 24 September presidential election in which the Democratic Opposition of Serbia candidate Vojislav Kostunica defeated Slobodan Milosevic and opened the door to a democratic transition in Serbia. In Kosovo, UNMIK-supervised municipal elections on 28 October resulted in moderate candidates being elected to a majority of local offices.

Concerning Serbia, the Special Rapporteur recognizes the courageous efforts of the political parties who opposed the Milosevic regime so effectively and the Serbian people whose dramatic street protests ensured a fair outcome to the election. However, he observes that President Kostunica's victory was only the first step towards peaceful democratic change. Deeply troubling human rights problems remain across the Federal Republic of Yugoslavia.

In Serbia (excluding Kosovo), the cases of many individuals arrested and subject to trial for political views during the Milosevic years remain unresolved, and hundreds of Kosovar Albanian political prisoners and thousands of Serbs who resisted service or deserted the security forces remain in prison or under threat of prosecution. In both Serbia and Montenegro, national minorities continue to suffer discrimination. Organized criminal activity - particularly

trafficking in women - remains a serious problem. In Kosovo, violence against Serbs and other ethnic minorities continues to fuel tension, while political attacks and assassinations among Kosovo Albanians have increased since the municipal elections. In addition, the functioning of the judicial and prison systems remains far below acceptable international standards.

The Federal Republic of Yugoslavia also faces serious economic and humanitarian challenges. The Special Rapporteur urges the international community to redouble its efforts to ensure that humanitarian needs are met in the country, in order to avoid a crisis and to give the new federal and Serbian governments adequate time to establish functioning democratic institutions.

Introduction

1. Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia, submits the present report covering events in the region of his mandate from September to December 2000. The report will be supplemented by an update at the time of its presentation to the Commission in spring 2001.

2. The Special Rapporteur wishes to commend in particular the field offices of the Office of the High Commissioner for Human Rights (OHCHR) in Sarajevo, Zagreb, Belgrade, Podgorica and Pristina. OHCHR field staff provide invaluable assistance to the Special Rapporteur in gathering and analysing information, preparing reports and organizing his missions to the region. He expresses his gratitude to the Governments which have provided financial assistance to the field activities of OHCHR in 2000 and strongly urges that such assistance be continued in 2001, which will be a crucial year for south-east Europe.

3. The Special Rapporteur has emphasized the importance of addressing some of the key problems in the countries of his mandate from a regional perspective. It will be recalled that this was one of the main reasons for the establishment of the Stability Pact. Several questions covered in the present report are best addressed regionally, including the return of refugees and related property issues, trafficking in human beings, and war-related prosecutions and amnesties (especially as they affect the return of refugees and displaced persons). The Special Rapporteur stresses that these issues are subject to the same human rights principles in all three countries of his mandate, and that their resolution will thus benefit from a concerted regional approach.

4. The Special Rapporteur therefore suggests that the Commission on Human Rights may wish to re-visit aspects of his mandate to permit better analysis of important human rights issues which cut across international borders. It may be useful to consider ways to facilitate a regional perspective in addition to the more traditional country-based approach.

I. BOSNIA AND HERZEGOVINA

5. The Special Rapporteur travelled on mission to Bosnia and Herzegovina from 11 to 15 June 2000. During visits to Sarajevo and Mostar, he met with representatives of international organizations and civil society, as well as of the judiciary, in order to get a full picture of the human rights situation. In addition to his own observations, the Special Rapporteur has continued to receive information on the human rights situation on a regular basis from the OHCHR field operation in Bosnia and Herzegovina.

A. Overview

6. In his previous report to the Commission on Human Rights, the Special Rapporteur stated that Bosnia and Herzegovina remained divided along ethnic lines and that substantial human rights violations were continuing, in particular violations of the rights to property and to return. One year later, he must observe once again that there is little fundamental change or significant progress to report on respect for human rights and the rule of law. The main reason for this unsatisfactory situation continues to be deliberate obstruction by those who hold the

power in Bosnia and Herzegovina. The municipal elections of April 2000 led to cautious optimism among international observers as non-nationalistic forces gained some ground, especially in parts of the Federation of Bosnia and Herzegovina (the "Federation"). However, the results of the general elections of November 2000, organized and supervised by the Organization for Security and Co-operation in Europe (OSCE) mission in Bosnia and Herzegovina, did not meet the expectations of the international community, and the success of nationalist parties was a significant reverse.

7. A climate of nationalism, as illustrated by the aggressive election campaign in November, continues to prevail in the country. Compared to the dramatic changes in both the Republic of Croatia and the Federal Republic of Yugoslavia in 2000, change in Bosnia and Herzegovina is happening at a much slower pace. This is perhaps not surprising, considering the large portions of the population that were and continue to be affected by the war and that therefore remain susceptible to nationalist rhetoric. The political environment, complicated constitutional and legal framework, and fragmentation of State institutions are the main impediments to any real change in Bosnia and Herzegovina. In addition, corruption and organized crime plague the society and prevent the healthy development of the economy. Illegal migration through Bosnia and Herzegovina to Western Europe and the trafficking of human beings have also been major issues in 2000.

B. General human rights situation

8. In his previous reports, the Special Rapporteur outlined his major areas of human rights concern in Bosnia and Herzegovina. These concerns remain valid. The role of the police, as agents of the State, in ensuring the effective protection of human rights is vitally important. Despite the efforts of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) to restructure the local police, police forces remain mono-ethnic in most areas and their effectiveness in crime detection, investigation and response remains low. The lack of a functioning and independent judiciary continues to be another major concern. The interference of political power structures both within law enforcement agencies and the judicial system remains strong. The judicial system assessment programme (JSAP) of UNMIBH, which is closing down in December 2000, has over a period of two years monitored and assessed the court system. Its main findings have been that the entire judiciary is politically, professionally and structurally dysfunctional. The successor of JSAP, the Independent Judicial Commission, will have the difficult task of actually implementing the judicial reforms needed.

9. On a more positive note, there has been a continued trend towards greater implementation of decisions of the Human Rights Chamber, the Ombudsman (previously the Ombudsperson), and the Federation Ombudsmen during the reporting period. Even recommendations and decisions in politically-sensitive cases, such as the decision to rebuild the destroyed mosque in Banja Luka, are finally being implemented. In April 2000, the first three Ombudsmen for the Republika Srpska were appointed as a multi-ethnic Ombudsman institution. As of November 2000, the first complaints were lodged with this new institution and will be investigated.

10. The main concern in Bosnia and Herzegovina continues to be the return of refugees and displaced persons. Security is still a major factor hindering return in some parts of the country. More than 300 return-related incidents were reported to the United Nations International Police Task Force (IPTF) since March 2000. Impunity of perpetrators of ethnically motivated attacks on returnees or their property remains the rule rather than the exception. Other factors slowing the rate of return of minorities are obstruction in property law implementation, lack of basic utilities, lack of employment opportunities, difficulties with regard to receiving pensions and health care, lack of facilities for education, and discrimination. The authorities at all levels have failed to create conditions conducive to sustainable return - one of the key demands of the Dayton Agreement. The question of the sustainability of return is of the utmost concern to the Special Rapporteur and hence is the main focus of the present report.

C. Right to return and to property

11. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), as of October 2000 there were still some 793,000 internally displaced persons (IDPs) in Bosnia and Herzegovina and 300,000 Bosnian refugees abroad. Under the new laws on refugees and IDPs, all displaced persons have to re-apply to maintain their status (as displaced persons). It is expected that this re-registration exercise, the results of which were expected in early December 2000, will determine more precisely the current number of displaced persons, as well as their aspirations for the future. The number is likely to be somewhat lower than the UNHCR figure and many IDPs/refugees may declare that they no longer wish to return to their pre-war homes.

12. The Special Rapporteur notes that, five years after the Dayton Agreement, there are still refugees for whom UNHCR advocates continued international protection. These include minority returnees, humanitarian cases (such as victims and witnesses of violence), witnesses before the International Criminal Tribunal for the former Yugoslavia (ICTY) and individuals needing special care. By analogy, protection and care should also be accorded to IDPs who are in the categories listed by UNHCR.

13. The amendments to the property laws imposed by the High Representative in October 1999 which harmonized the laws between the two Entities have now been in place for more than one year. Despite the enabling legal framework, and the strong efforts and substantial resources put into monitoring and enforcement, progress in this area continues to be unsatisfactory.

14. During the period July-September 2000, the rate of property repossessions rose only slightly, from 21 to 24 per cent in the Federation and from 9 to 10 per cent in the Republika Srpska, while the overall rate for the country rose from 15 to 18 per cent. Another serious concern is that the responsible housing officials are doing far too little to identify alternative accommodation, including emergency accommodation for those needing and legally entitled to housing. The law, however, is clear: the failure of the housing authorities to meet their obligations in this regard must not delay evictions. Only in a few municipalities have the housing authorities taken appropriate steps to provide alternative accommodation to those who face eviction during the coming winter months. As a most urgent measure, local officials should

take decisive and transparent steps to identify and use all unclaimed socially-owned apartments as alternative accommodation. Failure to do so will be another indication that the local authorities prefer finding excuses to actually respecting and implementing the law or providing assistance to the most needy and vulnerable citizens.

D. Economic and social rights and discrimination

15. As a reflection of the division of the country into three separate ethnic zones, ethnically-motivated violations of economic and social rights persist throughout Bosnia and Herzegovina. It is all the more difficult to combat these violations in that they are intrinsically linked with various forms of corruption. While the international community has focused on property issues and judicial and police reform, equally essential economic and social rights have been disregarded, even though in some cases they have an impact even on the right to life, especially for the most vulnerable groups.

16. It would not be an exaggeration to state that the deprivation of economic and social rights is a mere continuation of policies of ethnic cleansing. In areas where security is not at stake any more, such deprivation constitutes an obvious obstruction to sustainable return. Economic arguments are frequently used to rebuff concerns about economic and social rights violations, but problems in Bosnia and Herzegovina cannot be simplistically explained in economic and financial terms. The economic situation must not prevent the international and local communities from protecting economic and social rights and from combating all forms of discrimination. This is especially true since the dysfunctional economy is to a large extent the consequence of policies of ethnic division. The manipulation of the privatization process is but one illustration of this. Despite the importance of this part of the reconstruction process, the international community seems to have overlooked this central problem.

17. Among the core objectives of the international community is the economic viability of Bosnia and Herzegovina. The privatization process is considered a principal tool to speed up the transition towards a market economy and attract investment in a country that bears the double burden of a communist legacy and war devastation. However, the process should not be conducted at any price and without strict monitoring. In general there seems to be poor understanding of the complex realities in Bosnia and Herzegovina, and this ignorance has serious consequences, notably in that it reinforces discrimination and ethnic division.

18. Five years after Dayton, discrimination on the basis of ethnicity, political opinion and gender remains one of the core problems in Bosnia and Herzegovina. The importance of this matter increases as the international community tries to push for the accelerated return of refugees and IDPs. Return makes sense only if it is sustainable. Once the familiar obstacles of poor security and difficulties in property repossession are overcome, access to social and economic rights will be of primary importance. Unfortunately, many returnees - particularly in rural areas and locations where returnees are a small minority (in particular in eastern Republika Srpska and some Bosnian Croat controlled areas) - find themselves in extremely precarious conditions. This is especially true for the most vulnerable groups among the returnees, including the elderly, sick and disabled, and residents of collective centres.

1. Employment rights

19. In autumn 2000, the Federation Parliament adopted amendments to its labour law, while the Republika Srpska Assembly passed a new law. These texts, which, largely due to pressure from the international community, incorporate international norms, contain reinforced rights for workers and unions and prohibit discrimination on any grounds in labour relations. Incorporating the principles of non-discrimination represents a significant step forward. Implementation, as always, will be more difficult to achieve.

20. One project to promote fair employment principles and prevent discrimination, elaborated by the human rights community in Bosnia and Herzegovina, involves an information campaign and monitoring of employment practices. The purpose is to ensure that international labour standards are applied to encourage fair labour policies based on merit, and to foster responsible business behaviour. Such projects should not be a deterrent to foreign investments but a crucial element for eventual European integration. Their philosophy is in line with the trend linking business and human rights.

2. Pensions and health

21. Despite some marginal improvements, access to pensions and health care continues to be problematic. The March 2000 agreement between three major pension funds finally allows the payment of pensions at the place of return (through post office vouchers) by the pension fund of origin. However, since health insurance contributions remain attached to the place where pensions are paid (i.e. their Entity of origin), returnees are often deprived of their right of access to health care. The implementation of the March agreement is also problematic. For example, the Republika Srpska lacks a banking system that allows payments outside its territory. As a result, despite the agreement, returnees continue to receive their pension in the Entity from which they were displaced. Owing to the critical economic situation, pension funds in both Entities tend not to pay their contributions to insurance funds, which are thus on the verge of bankruptcy.

22. The current health system increases disparities since it is highly compartmentalized and replicates the constitutional divisions set out by the Dayton Agreement. In the Federation, the health insurance law devolves most financing responsibilities to the cantons. In practice, local insurance funds lack sufficient risk pools for efficient provision of health care, so that the poorest cantons are exposed disproportionately to "catastrophic" events such as the breakout of an epidemic. Of particular concern is the fact that the current health insurance structure does not foresee the possibility for pensioners who return to their Entity of origin to have access to health care, which tends to deter return.

3. Utilities

23. Many returnees and vulnerable persons are deprived of access to utilities, such as water, electricity and gas. Addressing this issue was considered a high priority by the Human Rights Task Force in January 2000, but no effective action has been taken to prevent abuses and arbitrary measures or to monitor the situation on the ground. This situation persists despite the wealth of knowledge of the problem which exists due to information provided to legal aid centres and the Federation Ombudsmen's office.

E. Gender based violence and trafficking

24. The trade in women and children for the purpose of forced prostitution remains one of the most serious human rights violations now being committed in Bosnia and Herzegovina. Information has been received from NGOs that women from Bosnia and Herzegovina are arriving at shelters in some Western European countries, indicating that the country is no longer a country of destination only, but also a country of origin.

25. The causes for the trafficking problem in Bosnia and Herzegovina include the lack of an effective State border service, the existence of a market and - of greatest significance - economic conditions in the countries of origin. Most women found in Bosnia and Herzegovina come from Moldova, Romania and the Ukraine. Disturbingly, recent raids on brothels in Bosnia and Herzegovina have shown that a substantial number are minors, some as young as 14.

26. To date, responsibility for protecting the human rights of these individuals has fallen almost entirely on the shoulders of the international community. Raids on night clubs, coffee bars and other locations where trafficked women are believed to work are conducted by local police accompanied by members of the United Nations International Police Task Force. Initial interviews are conducted and women are asked whether they want to return to the country of origin. As far as is possible, women are informed of their legal rights and offered counselling and health care but, given the limited resources, neither the international community nor the local authorities can offer all the assistance that is necessary.

27. The number of victims assisted thus far by the International Organization for Migration (IOM) and UNMIBH, as of the end of November 2000, included 198 women who had been repatriated and more than 360 who had been assisted to leave the places where they were being held. It is believed, however, that these are only a small percentage of the women brought into Bosnia and Herzegovina.

28. The prosecution of perpetrators largely depends on evidence provided by the trafficked women against the traffickers or bar and night club owners. To date, however, only three perpetrators have been successfully prosecuted and sentenced, with sentences ranging from 4 to 20 months' imprisonment, with fines. Clearly this is inadequate as a deterrent.

29. International representatives and local NGOs have requested that the Government take serious steps to deal with this problem. The Council of Ministers in November 2000 passed a resolution establishing a State-level working group chaired by the Ministry for European Integration and the Stability Pact. The aim of the working group is to draw up a national plan of action. All relevant ministries are involved and the plan covers the range of activities which must be undertaken, from prevention to prosecution and reintegration. Relevant agencies in the international community have been asked to provide assistance and expertise. Bosnia and Herzegovina will be represented at a meeting in Palermo in December 2000 for the signing of an anti-trafficking declaration drawn up by the Stability Pact. The authorities are also reviewing the draft protocol to prevent, suppress and punish trafficking in persons, especially women and children, which would supplement the United Nations Convention against Transnational Organized Crime. These measures are all steps forward and the actions of the Government are to be encouraged and supported.

F. Conclusions and recommendations

30. The Special Rapporteur is once again obliged to conclude that there has been little fundamental change in the situation of human rights in Bosnia and Herzegovina. Public officials and political leaders continue to perpetuate the results of past population displacements by obstructing the return of refugees and IDPs and undermining the rule of law, particularly in the area of property rights. Discriminatory practices in all areas, including employment and education, continue to flourish.

31. The rate of implementation of property repossession has improved, but there are still areas where it remains disappointing. The positive developments in the processing of claims and implementation of decisions continue to be due mainly to constant pressure from the international community. There is still some way to go before it can be regarded as a self-sustaining process driven by the local authorities. Monitoring the right to alternative and emergency housing needs to be pursued in order to root out misuse of property and to provide housing to people who fulfil the requirements.

32. In most cases, returnees find almost no prospect of normal life upon return. Discrimination in employment combined with the overall difficult economic situation of Bosnia and Herzegovina, lack of access to pensions or social protection, inadequate health care and limited educational possibilities all continue to be real obstacles to sustainable return.

33. Insufficient attention has been paid to the needs and problems of persons belonging to vulnerable groups, many of them women, in the return process. There is a grave risk of already disadvantaged groups being further marginalized and excluded when property is redistributed in Bosnia and Herzegovina through reconstruction assistance, privatization and allocation of the limited available housing stock. Additional efforts are needed to address the needs of vulnerable people.

34. The importance of reforming the police and the judiciary to improve respect for human rights cannot be overestimated. Such reform will not happen, however, without the political will and commitment of the local authorities, which so far have not been sufficiently forthcoming. In addition to the restructuring of the local police forces, UNMIBH/IPTF needs to continue to investigate human rights abuses committed by law enforcement agencies.

35. In the light of major inequities in the health care system, strategies should be developed to redress the main impediments to equal access, inter alia by reviewing health related legislation and expenditures on health care. Non-discrimination in policy and practice must be ensured.

36. Regarding employment, the international community should strongly support initiatives to prevent and eliminate discrimination. All programmes and policies pertaining to economic and social reform should incorporate anti-discrimination provisions.

37. The privatization process should be closely reviewed and initiatives should be taken to redress the discriminatory effects of privatization legislation. In particular, more energetic efforts should be dedicated to reversing illegal privatization.

38. A more aggressive approach should be taken to stop arbitrary and abusive deprivation of utilities. Strict monitoring should be undertaken by organizations present in the various communities.

II. REPUBLIC OF CROATIA

A. Introduction

39. The present report, prepared in late November 2000 to ensure timely submission to the fifty-seventh session of the Commission on Human Rights, reviews human rights developments in Croatia until the end of November and focuses on the issues of war crimes and the return of refugees. The report is based on information from various sources collected and analysed by staff of the OHCHR office in Zagreb.

40. The Special Rapporteur wishes again to thank the authorities of the Republic of Croatia for their continuing cooperation with the OHCHR office in Zagreb and for their assistance in the fulfilment of his mandate.

B. War Crimes

41. While recognizing the positive achievements of the Government of the Republic of Croatia in recent months, the Special Rapporteur expresses his continuing deep concern over the unequal application of the rule of law and the politicization of local judiciaries, as demonstrated by the recent escalation in seemingly arbitrary arrests of Croatian citizens (both domiciled and returnees) of Serb ethnicity - mainly elderly persons, pensioners, and farmers - on war crimes charges. Lists of ethnic Serbs suspected of war crimes, reportedly prepared by the previous regime, appear to have been revived by judicial bodies at the local level. Arrests are now being made on the basis of these lists (some prepared as many as eight years ago). In spite of assurances by President Stjepan Mesic that Croatia is a democratic society in which no citizen should feel targeted on account of ethnicity, these arrests have led to a deterioration of confidence in the country. Of particular concern, they are contributing to a slowing down of the already uneven process of minority return.

42. In September 2000, meanwhile, at least nine ethnic Croats - including members of the Croatian army and secret services - were detained in several cities in Croatia on charges of war crimes. Less than a month later, 13 Croatian Serbs (from a list of 121 suspected war criminals) who had long been resident in Baranja were taken into custody, also on alleged war crimes charges, although it remains unclear upon what new evidence these arrests were based. The 13 were held in the Osijek county prison, purportedly to prevent their influencing witnesses or otherwise provoking unrest among citizens. Three of the 13 were active police officers who, prior to signing an employment contract with the Ministry of the Interior in 1997 (following a thorough background check), received assurances that no war crimes investigations were pending against them. On 23 November 2000, five of them were released after a ruling by the Supreme Court requiring the Osijek county court to reconsider its decision to detain the prisoners for a further two months. The eight remaining suspects were to be held, at a minimum, until 6 January 2001.

43. Soon after two of the Baranja Serbs began a hunger strike on 13 October on grounds of unlawful detention, another list of names of 237 Serbs appeared in the city of Beli Manastir, signed by a previously unknown organization calling itself the Croatian National Guard which has, additionally, threatened to act if the Government failed to prosecute (Serb) war criminals. Lists of thousands of alleged war criminals have also been posted on the Internet pages of the Croatian Information Centre, which was set up by the former ruling party.

44. During a visit to Osijek prison by staff of OHCHR in Croatia (which continues to monitor war crimes trials in Croatia), several detainees expressed their belief that the Baranja arrests and the lists that subsequently appeared are part of a larger campaign of resistance to return, fuelled in the Danube region by community leaders, including the secretary of the municipality of Beli Manastir, who reportedly oppose the return of Serbs to the Danube region in particular and to Croatia in general.

45. Several Serb returnees in other areas of Croatia were also arrested on suspicion of involvement in war crimes and breaches of the laws and customs of war. An elderly Serb woman was taken into custody on 23 October in Vukovar, where she had lived since her alleged capture by Croat forces in 1991 and subsequent exchange with prisoners from the Federal Republic of Yugoslavia and the so-called Republika Srpska Krajina. A second woman, Jovanka Nenadovic, was indicted by the Pozega county court because a witness reportedly "heard" that she had participated in the torture of prisoners-of-war.

46. The arrests in Baranja reveal lack of transparency in the application of the 1996 Amnesty Law, but they are also widely believed to be politically inspired and intended to convey the illusion of a politically balanced - and therefore "impartial" - judicial process in local areas where, in an attempt to appease both Croats and Serbs, alleged war criminals of both ethnicities are being arrested. In any case, the large number of arrests of both returnee and domiciled Serbs in Croatia appears to be based on ethnicity and intended to force the remaining Serbs in the Danube region and other parts of the country to leave. Unofficial reports indicate that at least four Serb families left the Danube region for the Federal Republic of Yugoslavia within a week after the Baranja arrests.

47. Meanwhile, other war crimes arrests and trials are continuing. On 25 October 2000, a Serb male returnee was arrested on the basis of an in absentia indictment dating from September 1997. On 27 October 2000, two male Serbs were arrested in Borovo Naselje in the Danube region and transferred to the Pozega county prison. In the Slunj area, another Serb returnee, Milan Strunjas, was arrested on suspicion of having commanded the Territorial Defence Forces in 1991 and 1992 in the nearby village of Veljun, and an investigation was launched by the Karlovac county court into war crimes allegedly committed by him and 39 others, all suspected of being members of local Territorial Defence Forces. Borislav Stojanovic, a Serb returnee from the Republika Srpska, also suspected of war crimes, was arrested on 18 November at the Croatian border with Bosnia and Herzegovina. Another Serb returnee, Milan Grubjesic, was arrested on suspicion of war crimes in Vojnic on 4 November for his role in the death of Dragutin Krusic in Taboriste in 1991. The suspect was allegedly a member of the so-called Krajina Army and war presidency of Slunj municipality during the war.

In Sisak, the trial of Nebojsa Jelic - a Serb returnee accused of severely beating a group of Croatian policemen who had been taken prisoners-of-war in June 1991 - ended on 14 November at the county court with Mr. Jelic being found guilty and sentenced to five years in prison.

48. The Croatian Supreme Court confirmed on 11 October the verdict of the county court of Sisak in regard to Dragan Vranesevic, an ethnic Serb who was an active police officer in the Danube region. Mr. Vranesevic had been sentenced to 15 years' imprisonment earlier in 2000 for alleged participation in war crimes committed in the vicinity of Dvor na Uni. The appeal to the Supreme Court claimed that witnesses in the trial were pressured by the local authorities to provide false statements. Another war crimes suspect, Zeljko Cizmic - for whom an international arrest warrant was issued in 1995 on charges of war crimes - gave himself up to the Croatian police on 30 November. He was detained in Osijek following an interrogation in the Osijek centre of the Service for the Protection of the Constitutional Order (SZUP). In the case of Dejan Subotic, a citizen of the Federal Republic of Yugoslavia sentenced to 10 years in prison by the Dubrovnik county court in December 1999 on war crimes charges, a new trial was ordered on 11 December 2000. Mr. Subotic had been a reservist in the Yugoslav National Army.

49. The trial of Tihomir Oreskovic and four other former Croatian Army officers from Gospic suspected of killing several dozen Serb civilians in the Gospic and Karlobag areas in 1991 continues at the county court in Rijeka. Two of the five Gospic suspects were released on bail on 17 November, pending further investigation. A third suspect, Ivica Rozic, is accused of planting 13 explosive devices in the areas of Gospic, Korenica and Otocac, killing 6 persons and injuring another 12, in the post-war period from 1996 to 1999. Mr. Rozic is also under investigation for war crimes committed in Gospic and for the killing of three Serbs in Karlobag.

50. A Croatian Army officer, Zeljko Stepic, and a former head of the SZUP branch in Zadar, Joso Nekic - charged with helping the notorious Ahmici Group - were acquitted by the Zadar municipal court on 7 November on the grounds that neither of the accused could have known that the persons they were aiding and abetting in Zadar were part of the Ahmici Group; therefore, neither of the accused was charged with abusing his position.

51. ICTY investigators arrived in Pounje in Sisak-Moslavina county on 30 October to collect documents and evidence relating to the disappearance on 20 October 1991 of 144 Croat civilians from Bacin, Cerovljani and Hrvatska Dubica. The remains of 56 of the victims were exhumed in 1997 from a mass grave in Bacin, along the Una River, near Hrvatska Kostajnica. Most of the victims were between the ages of 60 and 90. To date, 37 have been positively identified.

52. Despite the Government's commitment - reaffirmed in the Zagreb Summit Declaration of 24 November 2000 - to respect its international obligations, including those regarding ICTY, Croatia will not accept "dictates" from the Office of the ICTY Prosecutor, according to the Deputy Prime Minister, Mr. Goran Granic. Mr. Granic, in an interview published on 30 November, hinted that Croatia's attitude towards The Hague might change if Croats, many of whom are perceived as war heroes in Croatia, were indicted for crimes committed in the 1995 army operations against rebel Serb forces. Cooperation between Zagreb and the Tribunal

has been difficult, particularly when Croatia perceives such cooperation to be against its political or security interests. ICTY continues to face a refusal by Croatia to transfer some relevant documentation on its actions relating to "Operation Storm", launched against rebel Serb forces in August 1995 to recover control over the "Krajina" region.

C. Returns

53. Although the Government recognizes that the observance of human rights and the protection of refugees and IDPs are of vital importance to stability in the region, and while it has committed itself publicly to respect the right of refugees and IDPs freely to return to their places of origin, their return continues to be obstructed in many ways. The central issue of property rights - in particular, property restitution and the question of lost tenancy or occupancy rights (stanarsko pravo) - continues to impede successful refugee returns. The Special Rapporteur calls upon the Government to address the issue of the loss of occupancy rights to socially-owned property. The return process is also undermined, mainly at local levels, by other obstacles which hinder return because of their cumulative effect. These include damaged or occupied houses; bleak economic conditions that provide scarce employment opportunities; and difficulties with local administrations in obtaining the necessary documents and permits allowing access to social benefits.

54. Although concrete results were expected regarding the resolution - under a "fast-track" procedure - of 88 straightforward ("easy") cases of multiple and illegal occupancy submitted to the Government in August 2000 by the international community, very few of the cases have been solved. Nearly 20 per cent of outstanding property cases concern illegal, double or multiple occupancies, where people occupy the houses of others while they maintain their own house elsewhere. It is important to emphasize that in none of these cases would the illegal occupants end up without a place to live if they were to be evicted, because such persons are usually well connected and have the protection of the local authorities. Only some 3,700 properties - of the nearly 18,000 assigned for temporary use during and since the war - have been repossessed by their lawful owners.

55. The Special Rapporteur believes it is necessary that the authorities devise a legal framework for property repossession that gives no possibility to various administrative bodies to obstruct its implementation, especially at local levels. This framework would also regulate the work of the municipal housing commissions, which have been ineffective in dealing with cases of property repossession and often actually hinder return. The Special Rapporteur wishes to emphasize that the adoption of sound legislation for the protection of human rights and fundamental freedoms that ensures the successful return of refugees and IDPs to their homes in Croatia must be followed up with concrete action. He cites, once again, the case of a deputy chief of police in Korenica whose wife opened a video store and pizzeria in a house belonging to an elderly Serb returnee, as an example of property rights violations in Croatia that are not being remedied.

56. Disturbing cases have been reported to OHCHR in Zagreb regarding the phenomenon of "cross-border multiple occupancies", in which Croats from Bosnia and Herzegovina occupy Serb-owned houses in Croatia, in addition to their own houses in Bosnia and Herzegovina. No bilateral agreement is in place between the two countries to address this issue.

57. Although return statistics for 2000 provided by the Government Office for Displaced Persons and Refugees (ODER) show an increase over the 1999 figures, for both spontaneous and organized return, the precise number is difficult to determine since many persons choose to return to their former homes and then leave permanently after settling their affairs. In general, the conditions for sustainable return, especially in the war-affected areas, remain largely unchanged. As of 24 November, the total number of refugees and IDPs who had returned stood at 39,318. This figure comprises 26,702 spontaneous as well as assisted returns from third countries and 12,616 returns of displaced persons, most of whom returned to the Danube region. Also as of 24 November, there were 13,689 pending applications - mostly from Bosnia and Herzegovina, and the Federal Republic of Yugoslavia - for repatriation to Croatia under the official return programme. Of this number, 11,089 will reportedly be allowed to return immediately, while the cases of the remaining 2,600 are on hold pending the provision of additional information.

D. Technical Cooperation

58. The Special Rapporteur welcomes the inauguration of the Human Rights Documentation and Training Centre in Zagreb, as well as the excellent cooperation between OHCHR and the Government which made the project feasible. Established within the framework of the programme of technical cooperation between OHCHR and the Government, the Centre was opened on 24 October to coincide with the observance worldwide of United Nations Day 2000. The ceremony was attended by senior officials of the Government, including the Deputy Prime Minister; heads of international organizations; senior diplomats; and the Croatian media. The Deputy Prime Minister expressed great satisfaction with the cooperation between OHCHR and the Government in establishing the Centre, which will allow all those interested in human rights to find useful information. The Centre will be open to all, including students, non-governmental organizations (NGOs), academics and journalists.

59. Two more technical cooperation projects were implemented by OHCHR in November. The first, in Zagreb and Split, provided training and advice to NGOs on the use of international human rights law and procedures. Representatives of some 25 local NGOs participated. The second event was the follow-up to the human rights seminars for senior law students held in summer 1999 in Opatija and summer 2000 in Dubrovnik. Both projects were positively assessed by participants, who requested additional follow-up. Preliminary talks were to be held in December 2000 with the technical cooperation partners of OHCHR on implementation of seminars in 2001.

E. Missing and detained persons

60. The Croatian Office for Missing and Detained Persons and its counterpart in the Federal Republic of Yugoslavia met for the second time in as many years on 21 and 22 November in Belgrade to exchange some 500 identification protocols and medical records. It is hoped that the meeting will help accelerate the resolution of 354 cases of persons missing, abducted or detained in Croatia and the Federal Republic of Yugoslavia. The Special Rapporteur regrets that despite the existence of the Croatian and Federal Republic of Yugoslavia bilateral commissions, little concrete progress on this crucial issue has been achieved to date.

61. On 3 November, medical specialists in Osijek announced the results of the identification of seven Croat soldiers and civilians exhumed from grave sites in Celije and Antunovac in the Danube region in 1997 and 1998. Using DNA analysis, forensic experts identified the remains of the victims, who had allegedly been abducted from Baranja in 1991 and taken to prison in Dalj, where they disappeared without trace. Bullet wounds and multiple fractures indicated violent deaths. Paramilitary units led by the late Zeljko Raznatovic ("Arkan") were among those reportedly in charge of the Dalj prison and the Celije area at the time.

62. Croatia continues to look for 1,571 persons - mostly ethnic Croats - who are officially listed as missing. The Special Rapporteur notes again that the current official list of missing persons in Croatia does little to reflect the unbiased search criteria proposed by the international community: the families of numerous missing Serbs who are not on the official list also have the right to be informed of the fate of their loved ones. The Special Rapporteur emphasizes that clarification of the fate and whereabouts of missing persons, regardless of ethnicity, is vital to the process of reconciliation and to lasting peace in the region.

F. Security

63. With more than one million landmines and sites of unexploded ordnance contaminating an area of approximately 4,500 square kilometres (out of the country's total area of 56,538 square kilometres), Croatia ranks among the most heavily mined countries in the world. The Croatian Mine Action Centre (HCR) has records indicating the location of some 270,000 mines. The need for de-mining is directly relevant to the return process, since it would help revive arable land and local economies, and clear landmine areas of strategic, economic or cultural importance, such as railway lines, utility substations, pipelines and churches. Returnees are at present among the highest percentage of mine casualties in Croatia. The HCR hopes that Croatia will be cleared of all mines by 2010.

G. Illegal migrants

64. Key officials of the Slovenian police and the Croatian Interior Ministry signed an agreement on 20 November to step up cooperation between their respective border police to prevent the rise in the number of migrants crossing illegally from Croatia into Slovenia. In the first six months of 2000, customs officials in Croatia detained more than 5,000 people trying to cross illegally into Croatia en route to Western Europe. Croatia's main problem appears to be the frontiers with Bosnia and Herzegovina, and the Federal Republic of Yugoslavia. Migrants are crossing these borders illegally in increasing numbers, especially since Italy increased its control of the Adriatic Sea, cutting smuggling channels from Albania and Montenegro.

H. Social and economic rights

65. Landmark constitutional amendments were passed on 9 November with the adoption by Parliament of laws aimed at speeding the transition from a semi-presidential to a parliamentary system of government, after months of political wrangling. It is believed these amendments will strengthen the Government and allow it to focus more on economic policy issues, considered its

greatest challenge. Unemployment in Croatia is currently at 21.4 per cent and rising, with dozens more bankruptcies on the horizon. Economic growth of just 3 per cent is projected for 2000.

66. In Belgrade, on 16 November, Croatian and the Federal Republic of Yugoslavia business executives met to help re-establish economic relations and to bind the two Governments to start on a framework for normalization and strengthening of economic cooperation. For Croatia this could mean the resuscitation of nearly 50,000 jobs if there is increased bilateral trade with the Federal Republic of Yugoslavia.

I. Gender issues

67. An expert meeting on gender and racial discrimination held in Zagreb on 21 November was described by the Deputy Prime Minister as being of great importance because it opened the door for Croatian women to deal with issues of discrimination at an international level. The meeting was organized by the United Nations Division for the Advancement of Women (DAW) in collaboration with OHCHR and the United Nations Development Fund for Women (UNIFEM) and was hosted by the Government of Croatia. Among the issues discussed were the identification of forms of racial discrimination directed against women and girls; the determination of difficulties women face in the enjoyment of their human rights as a result of the combined effect of racial and sex discrimination; and measures to eradicate racism, racial discrimination, xenophobia and related intolerance and their specific effects on women and girls. The recommendations of the meeting will be integrated into the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, scheduled to be held from 31 August to 7 September 2001 in Durban, South Africa.

J. Conclusions and recommendations

68. The Special Rapporteur expresses his support for the ongoing technical cooperation and assistance projects planned by OHCHR Croatia in 2001 in consultation with the Government of Croatia, and believes that projects emphasizing human rights training and universal human rights education can be of great value to Croatia.

69. In regard to war crimes trials, the Special Rapporteur believes it would be useful for State judicial bodies in Croatia to consult with the ICTY on particular cases. This would help to reassure Serbs that unfair war crimes trials in Croatia will no longer be the norm while, at the same time, supporting the Government and the judiciary in establishing criteria for fair trials. It is essential that war crimes proceedings be based on reliable evidence and individual criminal responsibility, rather than notions of collective guilt.

70. In the same context, the Special Rapporteur recommends that all necessary measures be taken to strengthen the independence and professionalism of the judiciary in Croatia, particularly at the community level.

71. The Special Rapporteur requests the Government to honour its international commitments and enable refugees and IDPs who, prior to 1991, held the tenancy rights to their socially-owned apartments, to repossess their apartments while, at the same time, ensuring that property laws are applied in a non-discriminatory way.

72. The Special Rapporteur also urges the Government to initiate the reform of laws governing property repossession, since land and property disputes continue to impede return, reintegration and, most importantly, reconciliation.

73. The Special Rapporteur calls once again upon competent authorities in Croatia to use unbiased search criteria - in accordance with humanitarian law - in investigating enforced disappearances. This means that the Government should also clarify the fate of ethnic Serbs who went missing during the war. Without significant progress on this issue, the Special Rapporteur believes it would be difficult to create conditions for peaceful coexistence, either in Croatia or in the region at large.

74. Finally, the Special Rapporteur believes that consideration of the human rights situation throughout the region of his mandate continues to require a broad approach encompassing all of the countries discussed in the present report, since none pursues its policies in isolation from the others.

III. FEDERAL REPUBLIC OF YUGOSLAVIA

A. Introduction

75. As the Special Rapporteur's findings for the period May-August 2000 were submitted to the General Assembly at its fifty-fifth session (A/55/282-S/2000/788), the present report covers the situation of human rights in the Federal Republic of Yugoslavia (FRY) from September to December 2000. As noted in previous reports, the dramatic pace of change in the region guarantees that many elements in this report will be superseded by events before the document is issued. Therefore, the Special Rapporteur will update the Commission on Human Rights on developments within the Federal Republic of Yugoslavia at the time of presentation of this report.

76. The Special Rapporteur visited Belgrade and Podgorica from 28 September to 3 October 2000. In Belgrade, he met with the newly elected President of the Federal Republic of Yugoslavia, Mr. Vojislav Kostunica (on two occasions), the Deputy Foreign Minister, the then Justice Minister of Serbia, representatives of several NGOs and the Independent Association of Journalists, a group of minors from the "Otpor" ("Resistance") opposition group who had been arrested and beaten by the police, and representatives of the Committee for the Release of Ivan Stambolic, the former president of Serbia, who was abducted on 25 August.

77. In Montenegro, the Special Rapporteur met with President Milo Djukanovic, the Minister for Foreign Affairs, the Minister for National Rights and the Rights of Ethnic Minorities, the Speaker of the Parliament, the two Deputy Speakers and the chiefs of all six party caucuses in the Parliament, and members of NGOs, women's groups, and cultural and academic organizations.

B. General observations

78. The Special Rapporteur notes that the last quarter of 2000 witnessed dramatic political changes in the Federal Republic of Yugoslavia which he hopes will lead to significant improvements in the human rights situation in the region over the next year. The most important development was the 24 September presidential election in which Democratic Opposition of Serbia (DOS) candidate Vojislav Kostunica defeated Slobodan Milosevic and opened the door to a democratic transition in Serbia. In Kosovo, municipal elections supervised by the United Nations Interim Administration in Kosovo (UNMIK) on 28 October resulted in moderate candidates being elected to a majority of local offices. Following the elections, the Special Representative of the Secretary-General, Dr. Bernard Kouchner, announced his departure from UNMIK in January 2001, and the Secretary-General appointed the Minister of Defence of Denmark, Mr. Hans Haekkerup to replace him. Montenegro navigated through the tense political period of the elections in the Federal Republic of Yugoslavia, with republic leaders refusing to organize participation in the vote. The republic now appears to be moving toward a referendum in 2001 on the question of independence.

79. The 24 September election dramatically shifted the political landscape in the Federal Republic of Yugoslavia. President Kostunica's victory stunned the Milosevic government, which sought to deny DOS the presidency after the vote, initially insisting that Milosevic had won, in spite of convincing independent evidence to the contrary, and then claiming that Kostunica had not won the majority required to avoid a run-off. DOS, however, had effectively organized its own vote observation whose reports undermined efforts to manipulate the election outcome, and huge, non-violent post-election rallies and protests across Serbia forced Milosevic to concede on 5 October. The Special Rapporteur recognizes the courageous efforts of the political parties who opposed the Milosevic regime so effectively and the Serbian people whose dramatic street protests ensured a fair outcome to the election.

80. However, President Kostunica's victory was only the first step toward peaceful democratic change. While DOS won control of the presidency of the Federal Republic of Yugoslavia, the Milosevic regime still controlled the larger and more powerful Republic of Serbia government, dominating the legislature, the executive, the courts and the police and State security apparatus. In the wake of the resounding electoral loss by the Milosevic government, DOS avoided pressures for an extra-constitutional purge of the Serbian government and negotiated instead the holding of elections for the Republic of Serbia on 23 December. It was expected that DOS would win decisively and thus bring to an end the Milosevic era.

81. The Special Rapporteur has been encouraged by President Kostunica's decision to quickly return the Federal Republic of Yugoslavia to the international community, rejoining the United Nations, OSCE and the Council of Europe, and inviting diplomatic representatives back to Belgrade. The President has recognized the authority of the Security Council resolution 1244 governing the United Nations administration of Kosovo, while opening a dialogue with UNMIK to address the issues of Kosovo Albanian political prisoners in Serbia, the treatment of Serb detainees in Kosovo and the fate of all persons who went missing in connection with the Kosovo conflict. He has argued for a peaceful, democratic and negotiated resolution of the status of

Montenegro in relation to the Federal Republic of Yugoslavia and his Government has handled with restraint a dangerous crisis in southern Serbia provoked by a Kosovar Albanian offshoot of the Kosovo Liberation Army operating in the Presevo valley.

82. Since the Special Rapporteur's last report, freedom of movement within and between Serbia and Montenegro (excluding Kosovo) has improved and cases of violations of the right to personal security, unlawful detention, allegations of ill-treatment in custody, lack of due process and threats to freedom of expression, conscience and assembly appear to have declined, although serious cases continue to arise. Reports of politically-related killings and involuntary disappearances also have diminished in Serbia and Montenegro since Milosevic was ousted.

83. Nonetheless, deeply troubling human rights problems remain across the Federal Republic of Yugoslavia, many the result of the still-uncorrected abuses of the Milosevic years, others (particularly those involving minorities) chronic concerns in this multi-ethnic State and yet others connected to serious ethnic conflict in Kosovo, which UNMIK has been unable to mitigate. In Serbia (excluding Kosovo) the cases of many individuals arrested and subject to trial for political views during the Milosevic years remain unresolved, and hundreds of Kosovar Albanian political prisoners and thousands of Serbs who resisted service or deserted the security forces remain in prison or under threat of prosecution. Poor prison conditions contributed to a series of prison riots and protests during the reporting period, and the administration of justice remains mired in its dysfunctional, politicized past. In both Serbia and Montenegro, national minorities continue to suffer discrimination, and organized criminal activity - particularly trafficking in women - remains a serious problem. In Kosovo, violence against Serbs and other ethnic minorities continues to fuel tension, political attacks and assassinations among Kosovo Albanians have picked up since the municipal elections, and the functioning of the judiciary and prison systems remains far below acceptable international standards.

84. In addition, the Federal Republic of Yugoslavia faces serious economic and humanitarian challenges for the winter due to the years of international isolation, mismanagement by the Milosevic government, lack of maintenance of basic infrastructure, destruction caused by the NATO bombing and an anaemic economy. The Special Rapporteur urges the international community to redouble its efforts to ensure that humanitarian needs are met over the winter months in order to avoid a crisis and to give the new federal and Serbian governments adequate time to establish functioning democratic institutions.

C. Developments in Serbia since the election

85. The Special Rapporteur visited Belgrade during the momentous, protest-filled days between the election of President Kostunica on 24 September and the concession of Slobodan Milosevic on 5 October. He spoke with President-elect Kostunica, opposition officials and some of the tens of thousands of protesters who gathered in central Belgrade, in front of the Federal Parliament, to defend the integrity of the election. The decisive event was the 5 October rally in which thousands of protesters from the interior of Serbia streamed into Belgrade to swell the size of the protest. The crowd stormed the buildings housing the Parliament and State television, police joined the demonstrators, the army refused to intervene and Milosevic was compelled to step down.

86. New management took over State owned companies and, although formally in control of the Serbian Parliament, Milosevic's coalition was, de facto, powerless. To overcome this impasse the Socialists agreed to early parliamentary elections, set for 23 December, and an interim Serbia government consisting of representatives of DOS, the Serb Renewal Movement and the Socialists. Three co-ministers - one from each of these political groups - led the key ministries of justice, the interior and information.

87. The election campaign for the Serb parliament was quiet and uneventful, in contrast to the violence, tension and tumult that had characterized the 24 September vote in the Federal Republic of Yugoslavia. Polls predicted an overwhelming DOS victory, and President Kostunica and the DOS coalition leaders focused on ministry appointments and legislative policy for the new government rather than participating actively in the run-up to the vote. In this context, the Special Rapporteur is encouraged by representations from the federal Government that its immediate priorities include constitutional and legislative changes to bring Federal Republic of Yugoslavia and Serbian legal norms and judiciary, prison and police into compliance with international standards. The Government of the Federal Republic of Yugoslavia has prepared a draft amnesty law that would lead to the release of significant numbers of draft resisters and Kosovar Albanian and Serb political prisoners. The Serbia Law on Information, the mechanism used by the Milosevic government to repress the independent print media, was suspended and Federal Republic of Yugoslavia officials stated that it was to be abolished as soon as the new Serbian parliament was elected and seated.

88. The Special Rapporteur expresses his concern at the very small number of women in the federal Parliament, less than 10 per cent, and in the federal Government, where not one of the 17 ministers is a woman. He strongly urges all political actors to actively encourage the participation of women in political parties, Parliament and government ministries.

D. National minorities

89. In a positive step to address concerns of minority communities, the new Government of the Federal Republic of Yugoslavia has established a Federal Ministry for National and Ethnic Communities. The appointment of Rasim Ljajic, a Muslim (Bosniac) from Sandzak (Sanjak), who is also a human rights activist, to head this ministry suggests that the new administration is sincere in its intentions to treat minorities in a different way from the prior government. One issue of immediate concern to the Special Rapporteur is the 5 per cent vote threshold that parties must reach in order to send representatives to the new Parliament - parties representing minority communities often have trouble meeting this requirement and thus end up excluded from the Government. The Special Rapporteur recommends that the Government of the Federal Republic of Yugoslavia and the incoming Republic of Serbia authorities review this provision and establish voting procedures that are as inclusive of minority communities as possible.

90. The Special Rapporteur is particularly concerned about the situation in the Sanjak region of Serbia, an area with large Muslim communities. Many of these communities were subject to serious human rights violations until the end of the war in Bosnia and Herzegovina. Although none of the most serious violations committed in that period are occurring now, members of Muslim communities report continued discrimination, lack of local media, restrictions on the choice of areas in which they can reside (hindering access to work, education and other services)

and poor availability of primary, secondary and university education institutions. These problems appear to be contributing to the uninterrupted exodus of the Muslim population from the region (reportedly over 5,000 houses in Novi Pazar municipality alone are currently up for sale).

E. Political prisoners and the missing

91. The Special Rapporteur is deeply concerned about the failure of the new Government of the Federal Republic of Yugoslavia to arrange immediately for the release of all political prisoners in Serbia. Over 700 Kosovo Albanians removed from Kosovo at the end of the conflict remain in detention after unfounded arrest, ill-treatment and torture in custody, denial of due process and unfair trials. The Albanian prisoners were potentially subject to violence during prison riots in November. Continued detention of these individuals contributes to rising ethnic conflict between Serbs and Albanians in Kosovo and serves as a major impediment to substantive talks among UNMIK, Kosovo Albanian leaders and the Government of the Federal Republic of Yugoslavia on a wide range of issues under the framework of resolution 1244 (1999). The Special Rapporteur urges in the strongest terms the immediate release of these detainees on humanitarian and human rights grounds. President Kostunica has promised to present an amnesty law to the Parliament of the Federal Republic of Yugoslavia that would lead to the release of many of the Kosovo Albanians and almost all Serbs detained for draft evasion and other military-related issues. The Special Rapporteur notes, however, that this law would not free those accused of "terrorism" - most of the Kosovo Albanian political prisoners, including the 144 individuals from Djakova who were convicted on the basis of "collective" guilt with no individual responsibility established.

92. On the other hand, the Special Rapporteur is greatly encouraged by the recent opening of high-level discussions between the Government of the Federal Republic of Yugoslavia and UNMIK to address the issues of the release of political prisoners and the treatment of detainees in Serbia and Kosovo. The talks are also seeking to find common approaches to determining the fate of the missing from all ethnic communities on a humanitarian basis.

93. The Special Rapporteur commends in particular the work of the High Commissioner for Human Rights' Special Envoy on persons deprived of liberty in connection with the Kosovo crisis, Swedish Ambassador Henrik Amneus, for his ongoing work in the region. Ambassador Amneus has spent over four weeks in Serbia, Montenegro and Kosovo during this reporting period and has met with governing authorities, family associations, detainees, United Nations and other officials, and other actors who might assist with the release of political prisoners or provide information on the fate of the missing.

F. Crisis in the Presevo valley

94. On 20 November 2000, four Serb police officers were killed and three others went missing in shootings between Serb police and members of the ethnic Albanian "Liberation Army of Presevo, Medvedja and Bujanovac" (UCPMB) operating in the Presevo valley region on the border with Kosovo. After two days of continued fighting, the International Security Force in Kosovo (KFOR) closed the control post at Dobrosin to prevent the UCPMB from using Kosovo as a base. On 24 November Albanian separatists fired at least one mortar shell from Kosovo into

south-east Serbia. An indefinite ceasefire was agreed between the rebels and Belgrade, and the bodies of the three missing Serb police officers were returned. On 29 November, in response to concerns expressed by President Kostunica that KFOR was not doing enough to prevent infiltration into the demilitarized zone, NATO Secretary-General Lord Robertson adopted new measures to end the insurgency. These included the mobilization of Kosovo Albanian politicians to moderate the hard-line UCPMB members; closer KFOR contacts with local Serb police; increased surveillance operations on the boundary line; and closer monitoring of any violence in the demilitarized zone along the border.

95. In the first week of December, KFOR began to ban men of combat age from crossing the administrative border into southern Serbia. Men aged 18 to 35 were forbidden to enter Serbia proper from Kosovo. UNMIK regulation 2000/62 provided the international security forces with powers to require that a person stay away from an area for up to 30 days in the interest of public peace and order. Persons found to be in breach of the order could face up to four months' imprisonment. In welcome contrast to a similar UNMIK regulation adopted in August 1999, regulation 2000/62 provides for judicial review of any detention order.

96. By 4 December, the demilitarized zone had grown calmer and the flow of Albanian IDPs out of the buffer zone into Kosovo had diminished. As of mid-December, an estimated 1,800 of the 5,000 IDPs in Kosovo had returned to their homes, largely because the security situation in certain villages near the zone was deemed less threatening than before and because of the increased presence of the international community in the area. At the time of writing, both sides remained committed to the ceasefire, but the situation remained volatile.

97. The Special Rapporteur commends the restraint demonstrated by the Government of the Federal Republic of Yugoslavia and its efforts to solve the crisis through diplomacy, as well as the prompt and comprehensive responses by UNMIK, KFOR and the international community condemning the UCMPB attacks and taking strong measures to contain the violence. He urges all parties to seek a negotiated solution in the light of the dangers that a conflict in south Serbia presents to the entire region. He further recommends that, after hostilities cease, the Federal Republic of Yugoslavia and Serb authorities address complaints of discrimination and ill-treatment against ethnic Albanians in the region - human rights abuses that may be contributing to the conflict.

G. Developments in Montenegro

98. Montenegro does not recognize the jurisdiction of the Government of the Federal Republic of Yugoslavia and conducts its own foreign, fiscal and domestic policies. The republic has cut monetary links with Serbia and introduced the German mark as its official currency, collects customs duties on its borders and has set its own course of institutional reform. Excluded illegally from many federal structures during the Milosevic regime, it challenged the legality of the 24 September election, officially choosing not to participate. Following recent changes in Belgrade, however, Montenegro's coalition is becoming increasingly strained between those favouring compromise with Serbia and those advocating independence. The Montenegrin government has already indicated that the people of Montenegro will vote in a referendum to determine the nature of their relationship with Serbia early in 2001.

1. Right to free and fair elections

99. The authorities of Montenegro boycotted the federal elections of 24 September but did not prevent Montenegrin citizens from voting. The official explanation for the boycott was that elections had been set on the basis of illegitimate constitutional changes adopted by the Belgrade regime. The pre-election campaign was largely quiet in the republic, but the State-run media were banned from carrying campaign advertisements or reporting on it. The opposition accused the Montenegrin the authorities of intimidating and harassing citizens who took part in the elections in Montenegro, including by threatening job dismissals.

100. Despite these allegations, most observers concluded that those who wanted to vote were able to do so in a free and fair manner. About 25 per cent of the electorate took part in the federal elections. The situation remained calm and quiet on election day, with very few incidents reported, the most serious of which was the arrest and mistreatment of four observers from the Centre for Democratic Transition by federal military police.

2. Trafficking in human beings

101. Although Montenegro has taken substantive action to address the problem of trafficking, there is still no adequate government policy to combat trafficking or to provide republic-wide protection for victims of trafficking. Women of foreign nationality detained in police raids are simply expelled from the country or left on their own in an unsafe environment, becoming once again easy prey for traffickers. Since 1999, a number of NGOs, supported by international donors, have provided shelter and counselling for victims of trafficking.

102. The Special Rapporteur is concerned that Montenegro continues to be a transit point for smuggling of illegal immigrants to Western Europe. In August, near the coastal town of Budva, the police apprehended 25 Chinese citizens and 3 smugglers. In most cases, trafficked immigrants enter the Federal Republic of Yugoslavia legally and then contact traffickers in order to continue the journey to destination countries.

3. Ethnic minorities

103. The Special Rapporteur welcomes the continuing focus of the Montenegrin authorities on ethnic minority issues. Ethnic minorities participate in the political process through established institutions and mechanisms, and a number of institutions deal with the problems of ethnic minorities, especially the Council for Protection of Members of National and Ethnic Groups, headed by the President of the Republic.

104. However, discrimination and prejudice against some minorities, especially the Roma population, still exist. Minorities are under-represented at the middle and lower levels of public administration. The relevant government agencies, especially the Ministry for Protection of National Rights and the Rights of the Ethnic Minorities, should intensify and diversify policy development in order to reach the smaller ethnic groups and to address their problems better.

H. Developments in Kosovo

105. The political situation in Kosovo changed significantly in three ways during the reporting period. First, UNMIK-organized elections in Kosovo's 31 municipalities on 28 October were characterized as free and fair by a Council of Europe monitoring mission and other international observers, with the largest concern being the absence of any minority participation - particularly Kosovo Serb - in the polling. Second, the election of a new government in Belgrade and the rapid reintegration of the Federal Republic of Yugoslavia into the United Nations and other international organizations has increased doubt over Kosovo's future status. Third, the Special Representative of the Secretary-General, Dr. Bernard Kouchner, ended his stay in Kosovo after the municipal elections and the Secretary-General appointed Mr. Hans Haekkerup, the Danish Minister of Defence, as the new head of UNMIK.

106. The Special Rapporteur would like to recognize Dr. Kouchner's efforts to organize UNMIK, stabilize Kosovo after the war and begin to build new, democratic institutions in a difficult post-conflict situation still rent by ethnic violence. However the effort of UNMIK has for many reasons not been very successful. The international community was late in providing needed and promised resources and personnel. Under these circumstances, UNMIK has been unable to control the borders or to prevent extremist Albanian forces from exercising power, expelling non-Albanians and stealing their property.

1. Municipal elections

107. Municipal elections were held in Kosovo on 28 October. Approximately 79 per cent of the population turned out to vote. The three largest parties won most of the votes, with Ibrahim Rugova's Democratic League of Kosovo (LDK) winning 58 per cent and two parties led by former Kosovo Liberation Army members - the Democratic Party of Kosovo (PDK) and the Alliance for the Future of Kosovo (AAK) - winning 28 per cent and 8 per cent respectively. The Special Rapporteur notes that the voters of Kosovo overwhelmingly endorsed the most moderate of the large parties contesting the municipal seats.

108. OSCE reports that it registered 901,423 eligible voters, the vast majority being of Albanian ethnicity. Almost all Kosovo Serbs refused to register to participate in the elections, largely as the result of a decision made by Serb leaders to boycott them, a decision enforced in many cases by intimidation. Some Kosovo Turks also did not register, protesting the failure of UNMIK to use their language on official documents during the registration process. A large part of the Roma community also did not participate in the election, claiming intimidation. Participation by the Bosniac, Gorani and Ashkali communities was rewarded with seats in their municipalities. Results in the municipalities of Zvecan, Zubin Potok and Leposavic, inhabited mostly by Kosovar Serbs, were not certified owing to low voter turn-out. The members of these municipal assemblies were thus appointed directly by the Special Representative of the Secretary-General. UNMIK has stressed that such direct appointments would be temporary until by-elections can be held in 2001.

109. The municipal elections, viewed as a prelude to Kosovo-wide elections in 2001, represent the first significant withdrawal of the international community from direct government of the province. Seen in this light, the Special Rapporteur emphasizes the need for the newly elected

municipal authorities in Kosovo to respect the rights of all individuals and represent all the populations they serve. This will require close monitoring to ensure that the rights and needs of all, and particularly of IDPs and refugees seeking to return to their original municipalities, are not overlooked. The Special Rapporteur therefore supports the Council of Europe's recommendation that a mission be undertaken early in 2001 to visit each municipality and report on implementation of UNMIK regulation 2000/45 on self-government of municipalities in Kosovo.

110. In its final report on the elections, the Council of Europe confirmed that despite organizational shortcomings, the elections were fair. Concerns were noted, however, over the high percentage of Kosovar residents living outside the territory who were disqualified from voter registration. Work should thus continue on updating the voters' list. An additional concern was that, despite the attention paid to the role of women candidates (according to the rules, 33 per cent of a party's candidates had to be women), the election results revealed that only 8 per cent of seats were allocated to women. It is hoped that further measures will be taken to ensure greater participation in the future.

111. Unfortunately, the election was not without politically related violence. In August, one LDK member was murdered and three others shot and wounded in separate incidents, suggesting an organized campaign of intimidation. An additional 2,000 KFOR troops were deployed to Kosovo to oversee security in the run-up to the poll. Since the elections, reported incidents of politically-motivated violence, primarily targeted at the LDK, continued unabated. An LDK official in Podujevo was shot at and threats have been received by LDK politicians in Pristina, Prizren and Glogovac. On 23 November, Xhemajl Mustafa, chief aide to LDK leader Ibrahim Rugova and head of the Kosovo Information Centre, was assassinated in central Pristina, shocking both the Kosovo Albanian and international communities.

112. On 22 November a bomb blast ripped through the Pristina/Prishtinë residence of Yugoslav representative Stanimir Vukicevic, leaving his driver Goran Jeftic dead and others injured. The Special Representative of the Secretary-General called the explosion part of a trend of premeditated violence which appeared to be the work of extremists.

113. The Special Rapporteur again calls upon UNMIK, KFOR and the international community to support the strongest measures to combat the three forms of ongoing violence in Kosovo - attacks against minorities, assaults against moderate Kosovo Albanian political parties and figures, and continued armed attacks organized from within Kosovo which are creating a dangerous crisis in southern Serbia. This violence threatens the modest progress towards democracy and stability made with difficulty by UNMIK over the past year.

2. Minorities

114. Little has changed for Kosovo's ethnic minorities since the Special Rapporteur's last report. Serbs and other groups remain trapped in KFOR-protected enclaves, without freedom of movement or access to employment, education or other services, and subject to attack, threats and intimidation. The few Kosovo Albanian communities in majority Serb areas face similar

circumstances. Lack of security remains the key issue for ethnic minorities. Some, particularly Kosovo Serbs in urban areas, continue to leave as a result. On the other hand, some small-scale spontaneous return has taken place among all the minority communities, as well as some positive steps towards the possibility of organized return. The joint committees for the return of Serbs and the Ashkaljia/Roma have provided working mechanisms for all actors to discuss issues of concern. A coordinated approach from the international community on all issues affecting minorities - particularly security, property, employment and access to services - will be necessary if the rights to remain and to return are to be ensured.

115. On 8 November, four members of the Ashkaljia community who had recently returned to their homes were brutally killed. The incident starkly highlighted the risk for displaced minority groups seeking to return. The four victims, including a 15-year-old boy, had been part of an advance party of Kosovo Albanian and Ashkali families seeking to return to the village of Dosevac/Dashevc, from which they had fled in July 1999. Less than two days after their return, the four were shot dead while sleeping in tents near their destroyed homes. In a letter to the Special Representative of the Secretary-General, the European Roma Rights Centre expressed alarm at the killings, noting that Kosovo remains unsafe for Roma and Ashkaljia and indeed all persons regarded by ethnic Albanians as "Gypsies". In a joint report in October on the situation of ethnic minorities in Kosovo, UNHCR and OSCE focused on the persistence of low-level harassment of minorities and its demoralizing impact.

116. While crime in Kosovo is generally declining, attacks against individuals from ethnic minorities remain disproportionately high. For example, UNMIK police sources indicate that during the period 2 January-28 October 2000, 122 Albanians (58 per cent of the total) and 78 Serb or other ethnic minorities (37 per cent) were reportedly murdered (in the remaining cases the ethnicity was not recorded), despite the fact that, overall, ethnic minorities constitute just some 10 per cent of the total population in Kosovo.

117. Some progress has been made in fostering reconciliation between minority groups and the Kosovo Albanian majority. Key initiatives include the Memorandum of Understanding signed between the SRSG and the Serbian National Council, the Platform for Joint Action for Roma, Ashkali and Egyptian communities, the Airlie House conference (which aimed to foster dialogue between Kosovo Serbs and Kosovo Albanians) and a strong statement from the NGO community condemning violence. Further initiatives of this type need to be developed.

118. A key concern for many Kosovars, but one particularly affecting minorities, is the legal status of property. The lack of effective access to mechanisms both to protect property rights and to allow the reconstruction of homes is one factor preventing minorities from returning. The limited progress of the Housing and Property Directorate and the Claims Commission is of particular concern. Regulation 2000/60 on residential property claims and the rules of procedure and evidence was finally promulgated on 31 October, but the pace and scope of its implementation must be greatly strengthened in 2001 if continued property disputes - intimately linked to social violence and the return of minorities - and the broader political problems they affect are to be mitigated.

3. Rule of law

119. In previous reports, the Special Rapporteur has stressed the importance of a functioning, fair judiciary and adherence to the principles of the rule of law by UNMIK for the resolution of ethnic, political and other conflicts within Kosovo society. As before, the Special Rapporteur expresses deep concern over the difficulty UNMIK has had in establishing a judiciary that functions in accordance with international standards governing fair trial. The Special Rapporteur notes that the human rights arm of UNMIK, the OSCE Rule of Law Unit, issued a six-month evaluation of the judicial system in October which was highly critical, documenting a range of serious human rights problems. Most problematic have been trials involving ethnic minorities, particularly Serbs, where bias on the part of Kosovo Albanian judges and prosecutors has been evident, and trial procedures poor. UNMIK efforts to address the problem of bias - hiring international judges and prosecutors to handle proceedings involving Serb defendants - has foundered as few international legal professionals have been recruited or are willing to remain for more than six months.

120. In addition, UNMIK still has not adopted regulations incorporating basic due process protections into the applicable law in Kosovo. No habeas corpus right - the ability to challenge the lawfulness of arrest and continued detention - is currently available and the norms governing the length of pre-trial detention contained in regulation 1999/26, which violate international standards, remain unchanged, despite widespread criticism by human rights actors, including the Special Rapporteur in previous reports.

I. Conclusions and recommendations

121. The Special Rapporteur welcomes the momentous changes in Serbia following the presidential election in the Federal Republic of Yugoslavia on 24 September and urges the new Federal Republic of Yugoslavia and Republic of Serbia governments to move quickly to reform legislative and executive institutions, particularly the judiciary and the police. This will establish the basis for a stable democracy under the rule of law in which human rights are promoted and protected. He also urges the international community to provide the humanitarian and economic assistance needed in the Federal Republic of Yugoslavia, particularly Serbia, to support the democratic transition just under way.

122. The new Federal Republic of Yugoslavia and Serbia governments should arrange for the immediate release of all Kosovo Albanian and Serb political prisoners on humanitarian and human rights grounds. The Government of the Federal Republic of Yugoslavia and UNMIK should continue discussions and develop a cooperative approach for addressing the fate of all of those detained or missing in connection with the Kosovo crisis on a humanitarian basis. The Special Rapporteur urges all parties to cooperate fully with these efforts.

123. The Special Rapporteur encourages the authorities in Serbia and Montenegro to expand efforts to address the problems confronting national minorities, in order to end discriminatory practices and enable all ethnic groups to participate in the political, social and economic spheres of the Federal Republic of Yugoslavia under conditions in which their human rights are protected.

124. All parties involved in the ongoing crisis in the Presevo valley are encouraged to continue to act with restraint and to pursue a negotiated resolution. One of the preconditions for a peaceful political solution is a determined effort to suppress all terrorist activities. The Special Representative asks the United Nations, UNMIK, KFOR, NATO and the European Union to work diligently to end the insurgency and then to work with the Federal Republic of Yugoslavia and Serb authorities to address the humanitarian, economic and human rights problems in the area which contribute to the emergency.

125. The Special Rapporteur welcomes the appointment of a new special representative of the Secretary-General in Kosovo and recommends that UNMIK renew its commitment to carrying out its peace maintenance and institution building mandates, in accordance with human rights norms and Security Council resolution 1244 (1999). He urges that immediate attention be paid to the legal framework - particularly the adoption of regulations finally providing for international due process protections, including new pre-trial detention norms and habeas corpus - and proper functioning of the judiciary and the prison system in the light of critiques and recommendations made by UNMIK itself, OHCHR and international human rights NGOs.

126. The Special Rapporteur recommends that all parties in the Federal Republic of Yugoslavia - Montenegro, Serbia and Kosovo - coordinate efforts to combat trafficking in human beings in the region, adopting common legislative norms, sharing information and strategies to capture and deter traffickers, and developing common assistance structures for victims.